



P.O. Box 976
Honolulu, Hawaii 96808

March 12, 2016

Honorable Angus L.K. McKelvey
Honorable Justin H. Woodson
Committee on Consumer Protection & Commerce
415 South Beretania Street
Honolulu, Hawaii 96813

Re: SB 2661 SD1

Dear Chair McKelvey, Vice-Chair Woodson and Committee Members:

I am a member of the Community Associations Institute Legislative Action Committee. CAI supports only the aspect of this bill that amends Hawaii Revised Statutes §667-94(a) & (b) with respect to the cure of default in a nonjudicial foreclosure.

Other aspects of SB 2661 SD1 propose a distinct departure from the pay first, dispute later principle that is fundamental to the effective self-governance of condominiums. SB 2661 SD1 invites unintended consequences. SB 2661 SD1 also suffers from numerous drafting deficiencies.

SB 2661 SD1 is not narrowly tailored to achieve the indicated purpose of protecting certain owners from the consequences of rule violations while they are also in default of their financial obligations to an association. It is also fair to wonder whether those who both fail to meet financial obligations and break the rules, at the same time, are deserving of special dispensation.

The record lacks an empirical basis for granting such special dispensation. It has not been demonstrated that the perceived problem occurs often, for example. It would be useful to have meaningful quantitative data before taking the risk of chipping away at an essential principle of condominium structure.

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Moreover, even if the bill works as intended, it should be acknowledged that SB 2661 SD1 will also enable unscrupulous owners to avoid and evade personal responsibility for their circumstances and for their conduct; and to impose the financial (and other) consequences of both on other consumers. CAI takes the position that it is unfair and inequitable to make one consumer pay the debt of another.

CAI, therefore, respectfully requests that the Committee hold the bill.

Very truly yours,

Philip Nerney

Philip Nerney

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, March 12, 2016 9:10 PM
To: CPCtestimony
Cc: mikegolojuch808@gmail.com
Subject: *Submitted testimony for SB2661 on Mar 14, 2016 14:00PM*

SB2661

Submitted on: 3/12/2016

Testimony for CPC on Mar 14, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch	Palehua Townhouse Association	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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LATE

I name is John Morris and I am an attorney who represents condominium and another homeowner associations. I am testifying in support of Senate Bill 2261, SD 1 because it attempts to balance the rights of the association with those of the owner.

Common expense payments are established by the association's annual budget and the amounts owed for common expenses are clearly stated in the budget. Moreover, common expenses are the "lifeblood" of the association and must be paid so the association can function fully and effectively. Therefore, this bill preserves the long-standing practice that owners must "pay first and dispute later" about the amount of common expenses.

Nevertheless, associations often claim other amounts from owners, such as fines, late fees, special charges, legal fees, and penalties, and sometimes those amounts are open to dispute. Moreover, they are not necessarily required immediately for the proper functioning of the association. Therefore, the pay first, dispute later practice does not necessarily work as well for those types of expenses.

Instead, particularly with respect to fines and penalties, there can be room for negotiation. For example, the purpose of a fine is to ensure compliance with the rules, not generate revenue. This means that if an owner is fined and later agrees to comply, collecting the fine is not necessarily required because it has achieved its purpose.

For that reason, SB 2661, CD1 proposes to give owners the right to submit those other charges – apart from common expenses – to the mediation process prior to payment. In that way, an independent third party – the mediator – will be able to help the association and the owner review the amounts being claimed as additional charges and determine whether they are valid and payable to the association. This should help both the association and the owner resolve disputes over these additional charges prior to going to court or to foreclosure.

Several years ago, the legislature established an "evaluative " mediation program for owners that would be ideal in this situation. That program has the ability to assist in the process of resolving disputes about assessments other than common expense. The evaluative mediation program does so by providing trained mediators with a legal background and an understanding of condominium issues.

If the matter cannot be resolved through mediation, the association or the owner have the opportunity to go to court or arbitration for a ruling by the judge. By participating in mediation, each side will at least understand the position of the other side if the matter goes forward.

Thank you for this opportunity to testify.

John Morris

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, March 13, 2016 5:22 PM
To: CPCtestimony
Cc: mrckima@gmail.com
Subject: Submitted testimony for SB2661 on Mar 14, 2016 14:00PM

SB2661

Submitted on: 3/13/2016

Testimony for CPC on Mar 14, 2016 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Marcia Kimura	Individual	Comments Only	No

Comments: In 514B-146 (g), association Board members who agree to mediation should be required to undergo the ENTIRE MEDIATION PROCESS, including receiving resolution recommendations which they may or may not approve. It has been shown that in two-thirds of mediation cases in 2015, Boards either did not follow through with the complete process, or refused to accept the resolution recommendations. This unjustly forces owners who may not be able to afford legal fees of their own attorneys to be subject to these costs.

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